

# Memorandum for General RFP Configuration

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**To:** Vendors with a current valid proposal for General RFP # 3363 for Consulting Services

**From:** David L. Litchliter

**Date:** September 23, 2004

**Project Number:** 35406

**Due Date:** Tuesday, October 12, 2004; 3:00p.m.

**Contact Name/Number:** Patricia Whitley / 601 359-2634      **Fax Number:** 601 354-6016

**Contact Email Address:** [whitley@its.state.ms.us](mailto:whitley@its.state.ms.us)

**Re:** Letter of Configuration (LOC) for consulting services for the development of a Microsoft-based Forms Management System for the Mississippi Department of Transportation

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The Mississippi Department of Information Technology Services (ITS) is seeking consulting services to provide development and implementation of a forms management system using the existing Microsoft Windows platform for the Mississippi Department of Transportation (MDOT). Due to recent internal requests for electronic forms and also the State mandated Administrative Procedures Act, the agency's need for a forms management system is immediate. Our records indicate that your company currently has a valid proposal on file at ITS in response to General RFP #3363 for Consulting Services. Our preliminary review of this RFP indicates that your company may offer services that are appropriate to the requirements of this project. Therefore, we are requesting your configuration assistance to provide the services described below. Please submit a written response for the requested services.

## 1. GENERAL LOC REQUIREMENTS

- 1.1 Vendor must be aware that the specifications detailed in this LOC are minimum requirements. Should vendor choose to propose services that exceed the requirements, it is the vendor's responsibility to specify in what manner the proposed services exceed the requirements.

- 1.2 Vendor **must respond** to each outline point and exhibit as it is labeled in this LOC by providing **the information requested**. In cases where no information is required from the Vendor, Vendor must respond by indicating “ACKNOWLEDGED,” “WILL COMPLY,” “AGREED” or “NOT APPLICABLE”, as appropriate.
- 1.3 Vendor must provide the following information regarding this proposal:
  - 1.3.1 Company’s Legal Name
  - 1.3.2 Company’s Address(es) for:
    - 1.3.2.1 Place order to
    - 1.3.2.2 Make payment to
  - 1.3.3 Company contact person including:
    - 1.3.3.1 Name
    - 1.3.3.2 Address
    - 1.3.3.3 Telephone number
    - 1.3.3.4 Fax number
    - 1.3.3.5 Email address
  - 1.3.4 Company’s State of Incorporation

## **2. PROJECT OVERVIEW**

MDOT is seeking Vendor assistance to provide the initial requirements study for, and the development, implementation, and training services for deployment of a forms management system. The agency anticipates utilizing its existing Microsoft product infrastructure, including the Microsoft SharePoint collaboration and information sharing application, to accomplish this task. Initially, the agency plans to contract with an experienced vendor to use four (4) existing forms to develop the system and to establish the process and procedures to implement and maintain the system in-house. It is envisioned that agency staff will continue the deployment and support of additional forms beyond these initial four (4) forms on an as-needed basis. This system must also automate the workflow process for each form, enabling the monitoring of the form and assuring the appropriate sign-off through out the approval process.

Currently, MDOT uses an antiquated system to develop their Standard Operating Procedures (SOPs). The process at present is cumbersome and primarily consists of development of the SOPs via word processing and routing the document to appropriate personnel via email to review, update and/or approve the form as needed. There is presently no mechanism to enable staff to monitor the workflow of this process. The SOP system is developed using macros in Word 97 and Word 2000. To effectively use this system, personnel must revert to the use of these product versions which are no longer the agency standard.

As previously stated, the agency plans to use vendor services to develop and implement the SOP forms process, and to develop and implement 3 additional forms (small, medium, and large – total of 4 forms). By so doing, the agency will utilize vendor services to establish the process and to provide training and mentoring during all aspects of the project to prepare the

MDOT staff to deploy additional forms beyond the parameters of this project. It is important to the agency that the system be easy to use, easy to maintain and easy to manage by the agency's staff. Thus, the agency is seeking onsite vendor assistance to facilitate mentoring, knowledge transfer, and application training.

The automation of the workflow component must include:

- Forms creation mechanism
- Routing of forms to various review and/or approval points
- Update or input of additional information at each point
- Electronic signature approval by appropriate personnel

Vendor may also be asked to provide additional assistance beyond the scope of this project. It is the intent of the agency to provide forms development and ongoing system support after the initial implementation of the defined forms. However, the agency may require additional assistance beyond the scope of this LOC should they encounter difficult forms or possibly the need to deploy more forms in a shorter period of time than the agency staff can develop and implement while also continuing to manage their day-to-day activities. Any such services requested of the Vendor outside of the scope of this project will be handled by a change order process.

### **3. PROJECT PHASED APPROACH**

- 3.1 Phase I - During this phase, the agency requires the winning Vendor to prepare a detailed plan for the forms management system's development and deployment. This plan must include:
  - 3.1.1 Detailed plan for development and deployment of the proposed system
  - 3.1.2 Detailed Architecture Document delineating the hardware and software requirements to support development and deployment of the system
  - 3.1.3 Skill set and training requirement(s) for technical support and training staff
  - 3.1.4 Detailed project plan for Phase II
- 3.2 Phase 2 – During this phase, the agency requires Vendor to develop, implement, and deploy the forms management system using the four (4) forms identified in this LOC (copies of forms and their related workflows are attached)
- 3.3 Implementation of additional forms beyond the four (4) forms identified in this LOC is beyond the scope of this LOC.

### **4. BACKGROUND INFORMATION**

- 4.1 MDOT desires to contract with a consulting Vendor experienced in development and implementation of forms management solutions.
- 4.2 MDOT is seeking a forms solution to be implemented within the framework of existing products currently in use by the agency. The agency's current infrastructure standard is Microsoft-based. Therefore, the agency is seeking a solution that utilizes this Microsoft product standard. The agency's Microsoft products available for use in this development include:
  - 4.2.1 Microsoft Sharepoint Portal Server 2003
  - 4.2.2 Microsoft BizTalk Server 2004
  - 4.2.3 Microsoft Active Directory, v2, Server 2003
  - 4.2.4 Microsoft Exchange 5.5 (Agency is in the process of upgrading to Exchange 2003)
  - 4.2.5 Microsoft Content Management Server 2002
  - 4.2.6 Microsoft Office 2003/Microsoft Office XP
  - 4.2.7 Microsoft SQL Server 2000
- 4.3 The list above is not all inclusive, but will provide an idea of the existing products available for the development and/or support of the required system.
- 4.4 The agency will provide individual(s) with workspace and computer access to the necessary Information Systems.
- 4.5 It is anticipated that, once deployed, a form may be accessed by as few as 50 or as many as 1,500 workstations.
- 4.6 Currently the installed base of non-CADD workstations includes various HP/ Compaq computer models from 500Mhz PIII processor to 2.8ghz P4 processor. A typical non-CADD Workstation configuration at the agency will be very similar to the following: HP/Compaq d325 with AMD Athlon 2800 XP Processor, 512Mb RAM, 40G HD, 10/100Mb Network Card. Current operating system software includes: Windows XP, Microsoft Office Professional including Word, Excel, Powerpoint, Outlook 2003. (Office suite is either Office XP, or Office 2003.) Other available applications include Infopath, Diskeeper 8, McAfee 7.1, Adobe Acrobat Reader, Internet Explorer 6.1, and Winzip.

## **5. SPECIFICATIONS**

- 5.1 ITS reserves the right to award this project to one (1) or more Vendors for one (1) or more individuals.
- 5.2 Individuals must have verifiable skills in the following areas. Vendor's resume and references should be able to substantiate this requirement. Vendor must provide individuals who possess the following demonstrated abilities. These are mandatory requirements. Experience in each of the areas below must be clearly identifiable and

detailed in the vendors experience resume' (as requested below). The individual must have working experience in the products designated below.

	<b>Skill</b>	<b>Minimum Experience (Years)</b>	<b>Actual Experience (Please Specify)</b>
5.2.1	Microsoft SharePoint Portal Server  (Specify Version(s) and length of experience):  _____ _____ _____	2	_____
5.2.2	Microsoft BizTalk	2	_____
5.2.3	Microsoft SQL Server	2	_____
5.2.4	Microsoft Active Directory 2003	2	_____
5.2.5	Microsoft Office 2003 including InfoPath	1	_____
5.2.6	Microsoft .NET Framework	1	_____
5.3	Additional consideration will be given for persons with verifiable Department of Transportation experience. Vendor must identify any such experience, specify the length of experience and provide reference information to substantiate the identified experience.		
5.4	Vendor must fully detail the depth of his/her forms management application experience in response to this requirement. Include in this discussion any products/applications experience, in addition to those listed above that Vendor believes to be relevant to this project. The requested information must include:		
5.4.1	Identification of the product,		
5.4.2	Length of the experience,		
5.4.3	The capacity in which the proposed individual worked (that is, design, development, testing, support, etc.),		
5.4.4	General project description, and		
5.4.5	A description of the individual's responsibilities relating to the project.		

## 6. FUNCTIONAL REQUIREMENTS

- 6.1 Tasks to be completed by proposed individual(s) include, but are not limited to the following.
  - 6.1.1 Must provide services to develop, implement a rapid forms deployment and management system using in-house Microsoft products
  - 6.1.2 Must use the following forms to create and establish the forms system:
    - 6.1.2.1 Standard Operating Procedures (SOPs)
    - 6.1.2.2 Request for Program Approval
    - 6.1.2.3 In-State and Out-of-State Travel Expenses
  - 6.1.3 Complaint/Incident Report
- 6.2 System must include version control capabilities to track and display modifications with the ability to incorporate modifications into final version of document.
- 6.3 System must include workflow capabilities to enable the following:
  - 6.3.1 Automatic document routing,
  - 6.3.2 Document update capabilities at appropriate routing points,
  - 6.3.3 Build flexible routing and approval chains.
  - 6.3.4 Attach other documents, such as maps
  - 6.3.5 Check-in and check-out documents feature with lockout capabilities
- 6.4 Must allow online notification during approval process (Microsoft Outlook integration).
- 6.5 Must protect content from alteration after approvals have been made.
- 6.6 Must provide a mechanism or interface to enable final approved documents to be stored in current Legato document management system. Vendor must be aware that final document storage is in PDF format in the Legato system.
- 6.7 Must provide digital signature capabilities within the document.
- 6.8 Must include application performance tuning as needed, during the warranty period, to facilitate consistent system performance.

## **7. SYSTEM WARRANTY REQUIREMENT**

- 7.1 Vendor must propose fixed pricing for six (6) months (estimated not-to-exceed X hours per week) of software warranty support that will include the following:
  - 7.1.1 Product support available during the hours of 8:00am – 5:00pm, Weekdays, Monday through Friday.
  - 7.1.2 Toll-free telephone support. Specify toll-free telephone number.
  - 7.1.3 Email-based technical support.
  - 7.1.4 Troubleshooting and problem resolution
  - 7.1.5 Knowledge transfer to MDOT staff

## **8. MENTORING AND KNOWLEDGE TRANSFER (TRAINING) REQUIREMENTS**

- 8.1 Vendor must provide onsite mentoring services to facilitate knowledge transfer of the process, development, troubleshooting, and management of the forms deployment system. This training must include, but is not limited to the following:
  - 8.1.1 How the system uses the following products in the creation, deployment and support of the forms management system:
    - 8.1.1.1 Microsoft BizTalk
    - 8.1.1.2 Microsoft Sharepoint Services (Portal)
  - 8.1.2 Troubleshooting and system maintenance
  - 8.1.3 General forms-related ad hoc support services as the need arises.
  - 8.1.4 Mentoring and training services must also include services to:
    - 8.1.4.1 Familiarize the MDOT staff with best practices, uses, and operations in utilizing the Forms Management System.
    - 8.1.4.2 Written bi-weekly status reports.
    - 8.1.4.3 Daily input and feedback to existing MDOT staff as well as MDOT management personnel. This feedback must include lessons learned to facilitate day-to-day system operations and support
  - 8.1.5 Assist in training via mentoring and knowledge transfer for up to six (6) agency staff in forms development, deployment, administration, maintenance and other forms specific issues.

- 8.1.6 Vendor must develop recommended guidelines for consistent continued use of the forms system by the agency staff after completion of this project. This must be provided as written documentation of processes, procedures, tasks, etc.
- 8.1.7 Vendor must recommend what prerequisite Microsoft product training or experience MDOT's resource personnel should possess in order to work effectively with the consultant during this forms development and implementation project.

## **9. PROJECT WORK PLAN**

- 9.1 The Vendor must include in this proposal, a high-level Project Work Plan based on the Vendor's plan to provide both Phase I and Phase II services. This plan must include an Executive Summary that outlines the overall strategy and approach to providing the requested services. The Plan must contain all significant work steps required for provision of the requested services. This should include, but is not limited to development, implementation, training, training materials, support services, and other components as being offered by Vendor in response to this RFP. Specify timeframes in terms of work days or weeks after contract signing.
- 9.2 Vendor must also include the minimum hardware and software requirements to implement the proposed system. In response to this requirement, Vendor must identify any product(s) that is not listed in this LOC but that is required to implement the proposed solution.
- 9.3 The Project Work Plan must allow 10 days for MDOT to review and approve task completion deliverables. The WorkPlan must identify milestones, must specify the amount of time allotted for completion of all tasks, and must include turn-around time for review and approval of work products by the agency.
- 9.4 The Project Work Plan must highlight the MDOT resources and task expectations necessary for the project to meet scheduled milestones and deliverables.
- 9.5 Selected contractor will work closely with agency staff, who will coordinate the activities on the agency side to assure timely access to the appropriate personnel and/ or information as needed.
- 9.6 The agency anticipates that the time frame to complete all project activities in Phase I will not exceed one (1) month. Should vendor believe, based on their experience with similar projects, that more time will be required for the Phase I requirements, vendor must provide justification for the time extension.

## **10. PRODUCT DEMONSTRATION**



- 10.1 Vendor must provide a demonstration of existing software developed by the Vendor that offers forms deployment functionality similar to that indicated in this LOC. This may be accomplished by:
  - 10.1.1 Providing an onsite demonstration of the product;
  - 10.1.2 Providing a demonstration diskette, CD, or DVD that enables the agency to view the primary features of the product;
  - 10.1.3 Providing access to the Vendor's product via Vendor's active website. If available on website, Vendor must provide the appropriate web address along with any security access, if needed.

## **11. OTHER REQUIREMENTS**

- 11.1 The individual(s) will be expected to start work on November 1, 2004 or other date negotiated by the parties. We will inform the respondents to this LOC of the actual start date after completion of the evaluation process.
- 11.2 Due to the requirements for product mentoring and knowledge transfer, the individual(s) will be required to work on-site at MDOT located at 401 North West Street, Jackson, Mississippi 39201.
- 11.3 The individual(s) will be required to work an average of thirty-two (32) hours per week during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. Individual(s) may occasionally be required to work outside of these hours.
- 11.4 Awarded individual(s) will work under the direction of a designated MDOT Project Manager.
- 11.5 Awarded individual(s) will be required to keep sufficient records of work performed daily along with the hours expended.
- 11.6 Awarded individuals will be required to follow all MDOT procedures, standards, and security standards for work in the agency's network environment.
- 11.7 A telephone number must be included for each individual proposed so they can be contacted for a telephone interview. ITS will pay toll charges in the continental United States. The Vendor must arrange a toll-free number for all other calls. ITS will work with the vendor to set up a date and time for the interview; however, we must be able to contact the individual directly. Individuals scoring less than 60% of telephone interview points may be eliminated from further consideration.
- 11.8 Proposed individuals may be required to attend an on-site interview with MDOT. All costs associated with the on-site interview will be the responsibility of the vendor. Individual(s) proposed must be available for an on-site interview with a 7

day notice from ITS. Individuals scoring less than 75% of on-site interview points may be eliminated from further consideration.

- 11.9 A copy of each individual's resume must be included. Proposals received without resumes will be eliminated from consideration. However, ITS will not use a resume to add experience to the Reference Information Form. The form must certify the amount of experience in months and the applicable specification(s) met by each project.
- 11.10 Individuals proposed must be proficient in spoken and written English.
- 11.11 Individuals proposed must be a U.S. citizen or meet and maintain employment eligibility requirements in compliance with all INS regulations. Vendor must provide evidence of identification and employment eligibility prior to the award of a contract that includes any personnel who are not U.S. citizens.
- 11.12 For added consideration, individuals may also list additional projects for similar services that the member has performed for others. Identify the entity, date of performance, role description and general project description. These projects are in addition to the forms specific reference requirements.
- 11.13 The individuals assigned to this project must remain part of the project throughout the duration of the contract as long as the personnel are employed by the Vendor, unless replacement is requested by the MDOT/ITS. This requirement includes the responsibility for ensuring all non-citizens maintain current INS eligibility throughout the duration of the contract.
- 11.14 ITS will require a contract with the winning vendor. Vendors responding to this LOC must be willing to negotiate in good faith such a contract. Performance measures mutually agreed upon by ITS and the winning Vendor will be included in the contract. If the winning Vendor has a Master Agreement with ITS, it may not be necessary to negotiate a separate contract. A Software Development Agreement has been attached for reference. Vendor must review and acknowledge acceptance of these contract terms.
- 11.15 Vendors must provide details of those features, capabilities, or characteristics of their proposals that, while not directly solicited in the LOC specifications, could add value to the customer considering the proposal. The State will evaluate this information for all valid vendors meeting LOC specifications and where it is believed this information adds value to a vendor's proposal, the State will rate vendors with additional consideration.
- 11.16 The State will use the following items to evaluate the lowest and best responder.
  - 11.16.1 Cost
  - 11.16.2 Quality of Proposal

- 11.16.3Experience
- 11.16.4Workplan
- 11.16.5Interview
- 11.16.6Demonstration
- 11.16.7Value Add

## **12. REFERENCE REQUIREMENT**

- 12.1 A Reference Information Sheet must be completed and submitted with vendor's response for each individual proposed. Vendor must provide at least three (3) references for each proposed individual. ITS prefers that references be from completed and/or substantially completed jobs that closely match this request.
- 12.2 Reference information must include at a minimum entity, supervisor's name, supervisor's telephone number, length of project, and a brief description of the project. References that are no longer in business cannot be used. Inability to reach the reference will deem that reference non-responsive.
- 12.3 All relevant experience must be included in the Reference Information Form. Proposals received without Reference Information Forms for each individual proposed will be eliminated from consideration. Individuals that do not meet the minimum requirements identified in the specifications will be eliminated from consideration. The experience listed on the form must be verifiable via reference checks. Experience listed that cannot be verified will not count toward meeting the minimum requirements.
- 12.4 Individuals receiving negative references may be eliminated from further consideration.

## **13. COST REQUIREMENTS**

- 13.1 Vendor must provide firm fixed price proposals for completion of both project phases.
- 13.2 At the end of Phase I, the Vendor and MDOT will jointly determine any adjustments and/or changes to system requirements that deviate from those detailed in this LOC. The Vendor will then prepare and submit a detailed Phase II project plan with schedules and firm costs based on hourly rates submitted in response to this LOC for the targeted forms effort. Vendor must be aware that the agency believes it has provided sufficient information in this LOC to enable Vendor to propose firm fixed pricing. Therefore, the agency does not envision a wide price disparity between the initial proposal and the Phase II pricing. However, should the initial phase uncover issues that will vary the final fixed cost proposal of phase II, then MDOT reserves the right to proceed with Phase II using the current Vendor or to conduct another competitive procurement for Phase II services utilizing the outcome from the initial (Phase I) project details. As a result of this LOC, Vendor

is being asked to propose all costs associated with both phases.

- 13.3 For Phase I, Vendor must propose a fixed price, deliverables-based agreement to provide the services as required in Phase I of this LOC. Vendor must include a cost itemization of all deliverables based upon project milestones as detailed in the proposed workplan.
- 13.4 Based on the Vendor's experience in similar projects, Vendor must provide an estimate of timeframe and cost for completing Phase II. Vendor must propose an hourly rate schedule for each skill set to be utilized in Phase II of this project. As identified above, at the end of Phase I the Vendor must provide a deliverable-based, fixed cost schedule for Phase II. The cost must be sufficiently itemized in such a manner as to allow MDOT to proceed with the forms management project or with only selected priority processes.
- 13.5 Upon completion and acceptance of Phase I deliverables, the State, at its sole discretion, will determine whether to continue this project to Phase II with the Phase I vendor. This decision will be based on the following criteria:
  - 13.5.1 Quality of Work Products from Phase I
  - 13.5.2 Phase II Proposal from Phase I
  - 13.5.3 Quality of Concept(s) for Phase II
  - 13.5.4 Final Cost Proposal (Variance from original estimate)
  - 13.5.5 Justification for any Cost Variance from Original Estimate
- 13.6 The contract period for this assignment will begin as soon as all parties agree on the contractual arrangements and will extend for a minimum six (6) month period. At the end of the initial contract period, the agency reserves the right to negotiate an additional term.
- 13.7 Vendor must specify the total project costs below:
  - 13.7.1 Fixed Cost for Phase I
    - 13.7.1.1 Detailed plan for system development and deployment  
\$ \_\_\_\_\_
    - 13.7.1.2 Detailed Architecture Document \$ \_\_\_\_\_
    - 13.7.1.3 Skill set and training requirement(s) Document \$ \_\_\_\_\_
    - 13.7.1.4 Detailed project plan for Phase II \$ \_\_\_\_\_

13.7.2 Fixed Cost for Phase II

13.7.2.1	System development	\$ _____
13.7.2.2	System implementation	\$ _____
13.7.2.3	System training/mentoring	\$ _____
13.7.2.4	Detailed Documentation	\$ _____
13.7.2.5	Travel	\$ _____
13.7.2.6	6-Month Warranty Costs	\$ _____
13.7.2.7	Other Costs (Specify)	\$ _____

13.7.3 Total Costs \$ \_\_\_\_\_

13.7.4 Hourly Rate(s) to be used in calculating changes to Phase II (Specify)  
\$ \_\_\_\_\_

- 13.8 Vendor must specify a change order rate (or rates) that will be guaranteed should the agency identify a need for future forms deployments, system enhancements or for services outside the scope of this project. The rate must be fully loaded and include all necessary expenses, with the exception of travel expenses. Vendor must specify the time period for which his/her company is willing to extend this change order rate.

13.8.1 Change Order Rate \$ \_\_\_\_\_

13.8.2 Change Order Rate Period \_\_\_\_\_ years

- 13.9 Vendor must be aware that the agency requires a 'Holdback' of 15% of each milestone payment until project completion. These funds will be released to vendor at project end and upon receipt and acceptance of all project deliverables.

## 14. DELIVERY INSTRUCTIONS

- 14.1 Vendor must label each page of proposal with the following information:

**Response to Project #35406 – MDOT Forms Services**  
\_\_\_\_\_(Insert Company Name) Page \_\_\_\_ of \_\_\_\_

- 14.2 Vendor must deliver this response to **Patricia Whitley** at ITS by the date and time specified above. Responses may be delivered by hand, via mail or by fax. **ITS WILL NOT BE RESPONSIBLE FOR DELAYS IN THE DELIVERY OF PROPOSALS.** It is solely the responsibility of the vendor that proposals reach ITS on time. Vendors should contact Patricia Whitley at telephone number 601 359-2634 (email address: whitley@its.state.ms.us ) to verify the receipt of their proposals. Proposals received after the deadline will be rejected.

- 14.3 If you have any questions concerning this request, please e-mail Patricia Whitley with ITS at [whitley@its.state.ms.us](mailto:whitley@its.state.ms.us). Any questions concerning the specifications detailed in this LOC must be received by Thursday, September 30, 2004 by 3:00 P.M. (Central Time).

Enclosure: CP-6: General RFP Information Form  
Reference Information Form  
Software Development Agreement  
EXHIBIT A - Forms and Workflow

### **CP-6: GENERAL RFP INFORMATION FORM - 3363**

Please submit the **ITS** requested information response under your general proposal #3363 using the following format.

Fax your completed form back to 601-354-6016 addressed to the Technology Consultant listed on the fax cover sheet. If the necessary information is not included, your response cannot be considered.

**ITS Technology Consultant Name:** Patricia Whitley **RFP#** 3363

**Company Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Contact Name:** \_\_\_\_\_ **Phone Number:** \_\_\_\_\_

<b>FUNCTION</b>	<b>INDIVIDUAL NAME</b>	<b>HOURLY RATE**</b>	<b>INDIVIDUAL'S DIRECT TELEPHONE #</b>

**\*\*If Vendor travel is necessary to meet the requirements of the LOC, Vendor should propose fully loaded costs excluding travel.**

## **REFERENCE INFORMATION FORM**

(Joe Smoe – Software developer)

The information provided below will be used to calculate experience points and to contact references. If one project included more than one specification, you can reference the specifications in one table (See example below). The information provided below must meet the minimum length of time per specification.

*Example below:*

<b>Specification</b>	5.2.1. MS Sharepoint; 5.2.3. MS Active Directory
<b>Entity</b>	ABC Company
<b>Supervisor's Name</b>	Joe Smoe
<b>Supervisor's Title</b>	Head Honcho
<b>Supervisor's Telephone #</b>	555-555-5555
<b>Supervisor's E-Mail Address</b>	jsmoe@abccompany.com
<b>Length of Project</b>	May 2002 – May 2004 (24 months)
<b>Brief Description of Project</b>	The ABC project allows bankers to develop, collaborate and approve forms pertaining to individuals credit reports.

<b>Specification</b>	
<b>Entity</b>	
<b>Supervisor's Name</b>	
<b>Supervisor's Title</b>	
<b>Supervisor's Telephone #</b>	
<b>Supervisor's E-Mail Address</b>	
<b>Length of Project</b>	
<b>Brief Description of Project</b>	

<b>Specification</b>	
<b>Entity</b>	
<b>Supervisor's Name</b>	
<b>Supervisor's Title</b>	
<b>Supervisor's Telephone #</b>	
<b>Supervisor's E-Mail Address</b>	
<b>Length of Project</b>	
<b>Brief Description of Project</b>	



**PROJECT NUMBER 35406**  
**FIXED PRICE AGREEMENT**  
**BETWEEN**

**INSERT VENDOR NAME**  
**AND**  
**MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES**  
**AS CONTRACTING AGENT FOR THE**  
**MISSISSIPPI DEPARTMENT OF TRANSPORTATION**

This Fixed Price Agreement (hereinafter referred to as “Agreement”) is entered into by and between INSERT VENDOR NAME, a INSERT STATE corporation having its principal place of business at INSERT VENDOR ADDRESS (hereinafter referred to as “Contractor”), and Mississippi Department of Information Technology Services having its principal place of business at 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201 (hereinafter referred to as “ITS”) as contracting agent for the Mississippi Department of Transportation located at 401 North West Street, Suite 2041, Jackson, Mississippi 39201 (hereinafter referred to as “Customer”). ITS and Customer are sometimes collectively referred to herein as “State.”

**WHEREAS**, the State, pursuant to Letter of Configuration Number 35406 dated INSERT DATE (hereinafter referred to as “LOC”), based on General Request for Proposals (hereinafter referred to as “RFP”) Number 3363 requested proposals for a qualified contractor to design, develop and implement a forms management system using Customer’s existing Microsoft Windows platform as described in the LOC; and

**WHEREAS**, after careful review of all proposals, the Contractor was the successful proposer in an open, fair and competitive procurement process to provide the above mentioned services;

**NOW THEREFORE**, in consideration of the mutual understandings, promises and agreements set forth herein, the parties hereto agree as follows:

**ARTICLE 1      TERM OF AGREEMENT**

**1.1**      Unless this Agreement is extended by mutual, written agreement or terminated as prescribed elsewhere in this Agreement, the term of this Agreement shall commence on the last date on which it is executed below and shall continue until the Contractor completes all tasks required herein pursuant to the Project Work Plan, including services during the Warranty Period. Time is of the essence in the performance of this Agreement. The System must be delivered; implemented; fully functional; accepted by the Customer, and all tasks required herein, with the exception of the warranty and maintenance period, completed on or before INSERT COMPLETION DATE unless a change in this date is mutually agreed to in writing by the State and the Contractor.

**1.2**      This Agreement will become a binding obligation on the State only upon the issuance of a valid purchase order by the Customer following contract execution and the issuance by ITS of the CP-1 Acquisition Approval Document.

**ARTICLE 2      DEFINITIONS**

**2.1**      “Agreement” shall mean this Fixed Price Agreement and any amendments thereto, between the Customer and the Contractor.

**2.2**      “Appropriate Change Order Rate” shall mean the rate specified in Article 9 herein for Project management, analysis and design, programming or clerical work performed under an authorized Change Order.

**2.3**      “Change Order” shall mean changes in the scope of work which are approved and agreed to in writing by the State and the Contractor as set forth in Article 9 herein.

**2.4**      “Contract Documents” shall mean those documents identified in Article 4 herein.

2.5 “Contractor” shall mean **INSERT VENDOR NAME** and its successors and assigns (subject to the provisions of the article herein titled “Assignments and Subcontracts”).

2.6 “Customer” shall mean the Mississippi Department of Transportation.

2.7 “Defect” shall mean any failure of the System to operate in conformity with the System specifications as contemplated by the LOC and the Contractor’s Proposal, as accepted by the State, in response thereto.

2.8 “Deliverable” shall include, but is not limited to, such Project products and services as plans, analyses, standards, documentation, manuals, procedures, software, source code, interfaces, tests, training, support, hardware, warranties and other items required for a successful System installation and not specifically excluded in writing by the Customer.

2.9 “ITS” shall mean the Mississippi Department of Information Technology Services.

2.10 “LOC” shall mean the procurement request Number 35406 issued **INSERT DATE** and based on General RFP No. 3363.

2.11 “Project” shall mean the analysis, design, development, conversion services and implementation services and associated Deliverables to be performed by the Contractor as described in the LOC and the Contract Documents.

2.12 “Project Work Plan” shall mean the planning and scheduling document described in the LOC which specifically identifies the Contractor’s tasks and time schedule, all of which is subject to the approval of the State.

2.13 “Proposal” shall mean the Contractor’s response dated **INSERT DATE OF RESPONSE** to the LOC.

2.14 “RFP” shall mean the General Request for Proposals No. 3363 issued by ITS.

2.15 “State” shall refer to Customer and ITS collectively.

2.16 “System” shall mean the forms management system as designed, developed and installed for the Customer in accordance with the provisions of this Agreement as specified in the LOC, and as amended by the approved Deliverables.

2.17 “Warranty Period” shall mean the period of **INSERT WARRANTY PERIOD** months after acceptance of the System during which the Contractor’s warranties are in effect.

2.18 “Work-in-Progress” shall mean all indicia of the Contractor’s efforts to complete the listed Deliverables, including but not limited to, all work papers, notes, preliminary designs, interview notes, estimates of scope of work, diagrams, bullet lists, models, prototypes, partial or complete program descriptions or definitions, program documentation on line and batch, all test case documentation, and all infrastructure components and infrastructure support items stretching across the entire Project, including but not limited to, all security coding, approvals processing, notes and comments, and all other infrastructure components in any form whatsoever. This list is not intended to be all-encompassing, but is set forth as an example of the breadth of the matter contemplated as “Work-in-Progress.”

### **ARTICLE 3 CONTRACTOR SERVICES**

The Contractor agrees to furnish to the Customer all hardware, software (including source code), services and associated Deliverables required to provide to the Customer a System as described in the LOC and this Agreement.

### **ARTICLE 4 CONTRACT DOCUMENTS**

4.1 The contract made by and between the parties hereto shall consist of, and precedence is hereby established by the order of the following documents incorporated herein:

- A. This Agreement signed by the parties herein;
- B. Any exhibits attached to this Agreement;
- C. The LOC;
- D. The General RFP No. 3363;
- E. The Project Work Plan as agreed to by the parties and any mutually agreed upon updates and amendments to the Project Work Plan, and
- F. The Contractor's Proposal as accepted by the

**4.2** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Project by the Contractor. The Contract Documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document ("A. This Agreement") and the lowest document is listed last ("F. Contractor's Proposal").

## **ARTICLE 5 SCOPE OF WORK**

**5.1** The scope of work for this Project is defined by the Contract Documents set forth in Article 4 herein. The System to be produced by the Contractor under this Agreement will contain all plans, analyses, standards, documentation, manuals, procedures, software, interfaces, tests, training, support, warranties, and other items required for a successful System installation and not specifically excluded in writing by the Customer.

**5.2** Contractor acknowledges that the project is comprised of two (2) Phases as described in the LOC. The State shall be under no obligation to proceed from Phase I to Phase II. Contractor shall not proceed to Phase II without written notice to proceed with Phase II from Customer. In no event shall the Customer be obligated for payment of any costs, fees or expenses incurred by Contractor or for the acquisition of any products or services described as comprising part of Phase II unless and until the Customer authorizes Contractor to proceed with Phase 2, in writing. The decision to proceed with Phase 2 shall be in the sole and absolute discretion of the Customer.

## **ARTICLE 6 COORDINATION OF PROJECT**

The Contractor acknowledges that the Customer intends to be actively involved in the day-to-day progress of the Project. The Contractor agrees to (a) obtain the Customer's approval of all tasks and the time schedule for completion of said tasks prior to commencing performance, if not already contained in the approved Project Work Plan; (b) notify the Customer's designated technical and Project managers of all meetings related to the Project so as to allow their participation in said meetings; (c) make available to the State Project team members all Project work papers and Work-in-Progress for review; (d) ensure that the Contractor Project Manager and the State Project Manager work closely together, and (e) meet with the Customer on a regular basis, and as otherwise requested by the Customer, to discuss the status of the Project.

## **ARTICLE 7 RESPONSES BY CUSTOMER AND/OR CONTRACTOR**

Whenever a response, approval, or other action is required in response to a request or submission by the Contractor, the Customer shall secure the required response, approval, or action from the necessary Customer officials or personnel, and Customer's Project Manager or his/her designee shall supply the Contractor with a written approval of the requested action if the Customer's response is positive, or with a written explanation detailing with reasonable particularity the causes for negative response by the Customer. Where agreement, approval, acceptance, consent, or similar action by the Customer or the Contractor is required, such action shall not be unreasonably delayed or withheld.

## **ARTICLE 8 PAYMENT TERMS**

**8.1 COMPENSATION:** Except as provided in Article 9, Change Order Procedure, of this Agreement, the total compensation to be paid to the Contractor by the Customer shall not exceed **INSERT TOTAL COST** (Fixed Price) for all products, services, travel, performances and expenses under this Agreement, payable as described in the Payment Schedule

and Deliverables List attached hereto as Exhibit A to this Agreement (authorization of payments is subject to the written approval of the State).

**8.2 PAYMENT SCHEDULE:** The Contractor and the State agree to the Deliverable Schedule as set forth in the Payment Schedule and Deliverables List included as Exhibit A to this Agreement. The Contractor will receive payment in the amount indicated in Article 8.1 herein, less retainage to be withheld in accordance with Article 11 herein, upon written acceptance by the Customer of each of the Deliverables defined therein. The parties agree that as the Project Work Plan is revised by written agreement of the parties during the term of this Agreement, the anticipated dates for acceptance of Deliverables and for the corresponding payments to the Contractor, but not the amounts of those payments, may likewise be revised only by written agreement of the parties.

**8.3 INVOICING:** Upon written acceptance, as set forth in Article 13 herein, by the Customer of a Deliverable which has an associated payment, the Contractor will invoice the Customer for the invoice amount of that payment as indicated in the schedule in Exhibit A of this Agreement less retainage to be withheld in accordance with Article 11 herein. Subject to the provisions of Article 13 herein, the Customer shall pay to the Contractor all approved and undisputed invoiced amounts due and owing within forty-five (45) days of the receipt by the Customer of each invoice. Late charges on any unpaid balance shall not exceed one and one-half percent (1.5%) per month or portion thereof from the expiration of such forty-five (45) day period until such time as the warrant or check is mailed or otherwise delivered to the Contractor. No payment, including final payment, shall be construed as acceptance of defective or incomplete work, and the Contractor shall remain responsible and liable for full performance in strict compliance with the Contract Documents. All payments shall be in United States currency.

**8.4** Acceptance by the Contractor of the last payment from the Customer shall operate as a release of all claims against the State by the Contractor and any subcontractors or other persons supplying labor or materials used in the performance of the work under this Agreement.

## **ARTICLE 9 CHANGE ORDER RATE AND PROCEDURE**

**9.1 CHANGES IN THE SCOPE OF WORK:** It is understood that the State may, at any time by a written order, make changes in the scope of the Project. No changes in scope are to be conducted or performed by the Contractor except by the express written approval of the State. The Contractor shall be obligated to perform all changes requested by the Customer which have no price or schedule effect.

**9.2 CHANGES AFFECTING PRICE OR SCHEDULE:** The Contractor shall have no obligation to proceed with any change that has a price or schedule effect until the parties have mutually agreed in writing thereto. Neither the State nor the Contractor shall be obligated to execute such a Change Order; and if no such Change Order is executed, the Contractor shall not be obliged or authorized to perform services beyond the scope of this Agreement and the Contract Documents. All executed Change Orders shall be incorporated into previously defined Deliverables.

**9.3 APPROPRIATE CHANGE ORDER RATE:** With respect to any Change Orders issued in accordance with Article 9 herein, the Contractor shall be compensated for work performed under a Change Order according to the hourly Appropriate Change Order Rate specified in the Contractor's Proposal. If there is a service that is not defined in the Appropriate Change Order Rate, the Contractor and the State will negotiate the rate. The Contractor agrees that each Appropriate Change Order Rate shall be a "fully loaded" rate, that is, it includes the cost of all materials, travel expenses, per diem, and all other expenses and incidentals incurred by the Contractor in the performance of the Change Order. The Contractor shall invoice the Customer upon acceptance by the Customer of all work documented in the Change Order, and the Customer shall pay invoice amounts on the terms set forth in this Agreement.

**9.4 CHANGE ORDERS:** Upon agreement of the parties to enter into a Change Order, the parties will execute such a Change Order setting forth in reasonable detail the work to be performed thereunder, the revisions necessary to the specifications or performance schedules of any affected Project Work Plan, and the estimated number of professional services hours that will be necessary to implement the work contemplated therein. The price of the work to be performed under any Change Order will be determined based upon the Appropriate Change Order Rate; however, the Change Order will be issued for a total fixed dollar amount and may not be exceeded regardless of the number of hours actually expended

by the Contractor to complete the work required by that Change Order. The Project Work Plan will be revised as necessary in accordance with Article 9.6 herein.

**9.5 PROGRESS REPORTS REGARDING CHANGES:** The Contractor will include in the progress reports delivered under this Agreement, the status of work performed under all then current Change Orders.

**9.6 REVISED PROJECT WORK PLAN:** In the event the Contractor and the State enter into a Change Order which increases or decreases the time required for the performance of any part of the work under this Agreement, the Contractor shall submit to the Customer a revised version of the Project Work Plan, clearly indicating all changes, at least five (5) working days prior to implementing any such changes.

**9.7 CUSTOMER'S REVIEW:** The Customer shall promptly review all revised Project Work Plans submitted under this Agreement, and shall notify the Contractor of its approval or disapproval, in whole or in part, of the proposed revisions, stating with particularity all grounds for any disapproval, within ten (10) working days of receiving the revisions from the Contractor. If the Customer fails to respond in such time period or any extension thereof, the Customer shall be deemed to have approved the revised Project Work Plan.

#### **ARTICLE 10 RETURN OF OVERPAYMENTS**

The Contractor agrees to return to the State any overpayments due to unearned funds or funds disallowed pursuant to the terms of this Agreement that were disbursed to the Contractor by the State. The Contractor shall return any overpayments to the State within thirty (30) calendar days after either discovery by the Contractor, or notification by the State of the overpayment. In the event that the Contractor or its independent auditor discovers an overpayment has been made, the Contractor shall repay said overpayment within thirty (30) calendar days without prior notification from the State. In the event that the State first discovers an overpayment has been made, the State will notify the Contractor by letter of such finding. Should repayment not be made in a timely manner, the State will charge interest of one percent (1%) per month compounded on the outstanding balance after thirty (30) calendar days after the date of notification by the State or discovery by the Contractor, or the maximum amount allowed by law, whichever is greater.

#### **ARTICLE 11 SECURITY FOR PERFORMANCE BY THE CONTRACTOR**

**RETAINAGE:** To secure the Contractor's performance under this Agreement, the Contractor agrees that the Customer shall hold back as retainage fifteen percent (15%) of each amount payable, including amounts payable under Change Orders, under this Agreement as set forth in Article 9 herein. The retainage amount will continue to be held until final acceptance of the System by the State and the expiration of the Warranty Period.

#### **ARTICLE 12 AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of the State to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Agreement. If the funds anticipated for the continuing fulfillment of this Agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or if there is a discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the State, the State shall have the right upon ten (10) working days written notice to the Contractor, to terminate this Agreement without damage, penalty, cost or expense to the State of any kind whatsoever. Customer shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement. The effective date of termination shall be as specified in the notice of termination. In such event, the Contractor shall be paid pursuant to the provisions of Article 21.5 herein.

#### **ARTICLE 13 ACCEPTANCE**

**13.1 DEFINITION:** "Acceptance" shall mean, with respect to each Deliverable, written notice from the Customer that it has accepted the Deliverable as conforming in all material respects to the applicable specifications, including any approved Change Orders, for such Deliverable. A "material defect" is one which the Customer determines would substantially impair the Customer's ability to use the Deliverable as intended in the LOC and this Agreement.



**13.2 ACCEPTANCE OF DELIVERABLE:** Any Deliverable ready for review and approval shall be submitted directly to the Customer's Project Director or his/her designee. Upon receipt, the Customer's Project Director or his/her designee shall promptly forward a written notice of receipt to the Contractor, and the Customer shall have ten (10) working days from receipt of the Deliverable to review same.

**13.3 CORRECTION OF MATERIAL DEFECT:** If the Customer determines that a Deliverable contains a material Defect, the Customer shall notify the Contractor's Project Manager in writing, describing the material Defect in sufficient detail to allow the Contractor to locate and correct the material Defect. In the event the Customer notifies the Contractor of a material Defect in a Deliverable, the Contractor shall: (a) promptly correct such material Defect, or if agreeable to Customer, (b) develop a plan to correct such material Defect within a reasonable period of time not to exceed ten (10) working days unless the State consents in writing to a longer period of time, and diligently proceed according to such plan until the material Defect has been corrected. Upon receipt of corrected Deliverables, the Customer shall have another acceptance period, as set forth in Article 13.2 herein, in which to re-evaluate/retest such Deliverable. If the Customer again determines that the Deliverable contains any material Defects, the Customer shall again notify the Contractor's Project Manager in writing, describing the material Defects in sufficient detail to allow the Contractor to locate and correct such material Defects within ten (10) working days thereafter, unless the Customer consents in writing to a longer period of time. Subject to the provisions of Article 13.4 herein, the Customer and the Contractor will continue to perform the tasks required by this Article 13.3 as necessary until the Deliverable is acceptable to the Customer. The Customer shall not unreasonably withhold or delay its acceptance or rejection of corrected Deliverables.

**13.4 INABILITY TO CORRECT MATERIAL DEFECT:** If after three (3) repeated good-faith efforts, or such reasonable time as determined by the Customer depending on the nature of the material Defect or the complexity thereof, the Contractor is unable to correct any material Defects preventing acceptance of a Deliverable, the Customer may, at its sole discretion, either (a) notify the Contractor that it has elected to keep the Deliverable despite such material Defects, (b) invoke liquidated damages; return the Deliverable to the Contractor, and provide the Contractor with an opportunity to deliver substitute Deliverables acceptable to the Customer within the time period specified by the Customer, (c) return the Deliverable to the Contractor and withhold payment of amounts relating to such Deliverable, or (d) terminate the Agreement, in whole or in part, pursuant to Article 21. If Customer elects to terminate the Agreement pursuant to clause (d), the cure period specified in Article 21 will not be allowed, there having already been three (3) repeated good faith efforts to correct the Defect. If the Customer elects to keep a Deliverable containing material Defects pursuant to clause (a) above, or if the Customer returns the Deliverable pursuant to clause (c), the State shall have the right to obtain professional services from third parties to attempt to remedy such material Defects, provided that all such third parties execute a confidentiality agreement to protect the interests of the Contractor prior to being given access to any Deliverable or to any of the Contractor's proprietary information pertaining to it. All additional costs incurred by the Customer in obtaining such third party professional services shall be borne by the Contractor and the Customer shall be entitled, in its discretion, to withhold such costs from any payments which may otherwise be due the Contractor upon acceptance of the conforming Deliverable or to invoice the Contractor for said costs, which invoice shall be paid by the Contractor within ten (10) working days of receipt. In addition to all other rights and remedies set forth in this Agreement, in the event the Customer determines that the Project is in jeopardy due to the Contractor's inability to submit acceptable Deliverables, then the State may terminate this Agreement for cause in accordance with Article 21.1 of this Agreement and recover its damages sustained as a result thereof.

## **ARTICLE 14 WARRANTIES**

**14.1 IMPLIED WARRANTIES:** The Contractor shall not disclaim implied warranties of merchantability and implied warranties of fitness for a particular purpose. Any provisions disclaiming implied warranties shall be null and void.

**14.2 WARRANTY FOR DELIVERABLES:** The Contractor represents and warrants for the Warranty Period that all Deliverables shall be free from any Defect, deficiency, faultiness, imperfection, inadequacy, incompleteness or other condition (collectively referred to herein as "Defect") which would render any such Deliverable inoperable in any way or which would prevent full System performance in accordance with the specifications set forth in the Contract Documents. This warranty includes, without limitation, correction of errors, design deficiencies, performance deficiencies, and incorrect or defective documentation, including those found during acceptance testing, implementation, and the Warranty Period. Acceptance testing shall not in any way relieve the Contractor of its responsibilities to correct any Defect during the

Warranty Period. The Contractor shall repair or replace any Deliverable containing a Defect at no cost to the State within ten (10) working days of receiving notice of the Defect from the State. In the event the Contractor can not repair or replace a Deliverable during the Warranty Period, Contractor shall refund the fees paid for the defective Deliverable, and refund any fees paid for services that directly relate to the defective Deliverable.

**14.3** The Contractor represents and warrants that all hardware and software provided by Contractor shall meet or exceed the minimum specifications set forth in the LOC and Contractor's Proposal.

**14.4** Contractor represents and warrants, for a period of ninety (90) days from performance of the service, that all work hereunder, including but not limited to, consulting, training and technical support, has been performed in a good and workmanlike manner and consistent with generally accepted industry standards. For any breach of this warranty, Contractor shall perform the services again, at no cost to Customer, or if Contractor is unable to perform the services as warranted, Contractor shall reimburse Customer the fees paid to Contractor for the unsatisfactory services.

**14.5** The Contractor represents and warrants that it has and shall obtain and pass through to Customer any and all warranties obtained or available from the licensor of third party software or the manufacturer of the equipment and replacement parts supplied to Contractor.

**14.6** Contractor represents and warrants that it has the right to sell the equipment and license the third party software provided under this Agreement.

**14.7** Contractor represents and warrants that there is no disabling code or lockup program or device embedded in the software provided to Customer. Contractor further agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Customer's use of the software and/or which would restrict Customer from accessing its data files or in any way interfere with the transaction of Customer's business. For any breach of this warranty, Contractor at its expense shall, within five (5) working days after receipt of notification of the breach, deliver software to Customer that is free of such disabling code, lockup program or device.

**14.8** Contractor represents and warrants that the software provided to Customer does not contain a computer virus. For any breach of this warranty, Contractor at its expense shall, within five (5) working days after receipt of notification of the breach, deliver software to Customer that is free of any virus, and shall be responsible for repairing, at Contractor's expense, any and all damage done by the virus to Customer's site.

**14.9** Contractor represents and warrants that the Customer shall acquire good and clear title to the hardware purchased and all Deliverables provided hereunder.

**14.10** The Contractor represents and warrants that each unit of hardware delivered shall be delivered new and not as previously "used, substituted, rebuilt, refurbished or reinstalled" equipment.

**14.11 WARRANTY AGAINST BROKER'S FEE:** The Contractor represents and warrants that it has not employed any company or person, other than a *bona fide* employee working solely for the Contractor or for a company regularly employed as its marketing agent, to solicit or secure the Agreement. The Contractor also warrants that it has not paid or agreed to pay any company or person, other than a *bona fide* employee working solely for the Contractor or for a company regularly employed by the Contractor as its marketing agency, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award of the Agreement. For breach or violation of this warranty, the State shall have the right to cancel the Agreement without liability, or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fees.

**14.12 WARRANTY AGAINST CONFLICT OF INTEREST:** No official or employee of the Customer or of ITS, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Project shall, prior to the completion of said Project, voluntarily acquire

any personal interest, direct or indirect, in the Agreement. The Contractor warrants that it has removed any material conflict of interest prior to the signing of the Agreement, and that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its responsibilities under the Agreement. The Contractor also warrants that in the performance of the Agreement no person having any such known interests shall be employed.

**14.13 WARRANTY AGAINST GRATUITIES:** The Contractor represents and warrants that no elected or appointed officer or other employee of the State of Mississippi has or shall benefit financially or materially from the Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Agreement if it is found, after notice and hearing by the Executive Director of ITS or duly authorized representative, that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor to any officer or employee of the State of Mississippi with a view toward securing the Agreement or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the Executive Director of ITS or duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court. In the event the Agreement is terminated under this clause, the State of Mississippi shall be entitled to pursue the same remedies against the Contractor as it would pursue in the event of a breach of contract by the Contractor, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

**14.14 WARRANTY OF SOFTWARE COMPLIANCE:** The Contractor represents and warrants that any software or other products delivered hereunder will not deviate from the specifications set forth in the Contract Documents, will perform the tasks for which it is designed and will function correctly, and will comply with the State's current information systems standards and procedures and the State operational requirements, as agreed upon by the Customer, ITS, or their designated representatives.

**14.15 WARRANTY OF CONVEYANCE OF PROJECT DOCUMENTS:** The Contractor represents and warrants that, upon completion of the Project, the Contractor, and all subcontractors, shall convey to the State copies of all interim reports, cost records, data collection forms, and any working papers that support the final acceptance.

**14.16 NO LIMITATION OF LIABILITY:** Neither Contractor nor its subcontractors, if any, shall have any limitation on liability for breach of any warranty or any other provision of this Agreement, except that in no event shall the Contractor be liable for any damages arising as a result of the State's negligent, willful or wanton conduct.

#### **ARTICLE 15 INFRINGEMENT INDEMNIFICATION**

The Contractor represents and warrants that the materials and Deliverables provided to the Customer under this Agreement, and their use by the Customer, will not infringe or constitute an infringement of any copyright, patent, trademark, trade secret or other proprietary right of any person or entity. Contractor, at its own expense, shall defend or settle any and all infringement actions filed against Contractor or Customer which involve the materials and Deliverables provided under this Agreement and shall pay all costs, attorney fees, damages and judgment finally awarded against Customer. If, in any such suit arising from such claim, the continued use of the items for the purpose intended is enjoined or threatened to be enjoined by any court of competent jurisdiction, Contractor shall, at its expense: (a) first procure for Customer the right to continue using such items, or upon failing to procure such right; (b) modify or replace them with non-infringing items, or upon failing to secure either such right, (c) refund to Customer the fees previously paid by Customer for the materials Customer may no longer use and shall compensate the Customer for the lost value of the infringing part to the Phase in which it was used, up to and including the contract price for said Phase. Said refund shall be paid within ten (10) working days of notice to the Customer to discontinue said use. In addition to the foregoing, the Contractor shall indemnify the Customer in accordance with the provisions of Article 20 herein.

#### **ARTICLE 16 CONTRACTOR'S STAFF**

**16.1** The Contractor agrees that the persons identified in the Contractor's response to the State's LOC shall be assigned to this Project at its commencement or as more particularly outlined in the Contractor's Proposal, and shall remain a part of this Project throughout the duration of the Agreement as long as such personnel is employed by the Contractor and is not replaced by the Contractor at the request of the Customer. Contractor further agrees that the assigned personnel will function



in the capacity for which their services were acquired throughout the life of this Agreement. Any failure by the Contractor to so provide these persons shall entitle the State to terminate this Agreement for cause. Contractor agrees to pay the Customer fifty percent (50%) of the total contract amount if any of the assigned personnel is removed from the Project prior to the ending date of the Agreement for reasons other than departure from the Contractor's employment or replacement by Contractor pursuant to the Customer's request. Subject to the State's written approval, the Contractor may substitute qualified persons in the event of the separation of the incumbents therein from employment with Contractor or for other compelling reasons that are acceptable to the State, and may also assign additional staff to provide technical support to the Customer. All substitute personnel assigned to this Project shall have equal or greater ability, experience and qualifications than the departing personnel and shall be subject to the prior written approval of the Customer. The Contractor must notify the Customer of any proposed removal of any Project personnel. The notice shall include the resumes and two (2) references for any proposed replacement personnel. The Contractor will not permanently divert any staff member from meeting work schedule(s) developed and approved under this Agreement unless approved in writing by the Customer. In the event of Contractor personnel loss or redirection, the services performed by the Contractor shall be uninterrupted, and the Contractor shall report in required status reports its efforts and progress in finding replacements and the effect of the absence of those personnel.

**16.2 REMOVAL OF STAFF:** If at any time during the term of this Agreement the State becomes dissatisfied with the performance of any Contractor/subcontractor staff, the State may require replacement of such staff, which replacement shall be done within ten (10) working days of the request.

#### **ARTICLE 17 OWNERSHIP OF DOCUMENTS AND WORK PAPERS**

The Customer shall own all documents, notes, programs, databases (and all applications thereof), studies, files, reports, work papers and all other materials, electronic or otherwise, created by Contractor in connection with the Project, whether completed or in progress, except for the Contractor's internal administrative and quality assurance files and internal Project correspondence. The Contractor shall deliver such documents and work papers to the Customer upon termination or completion of this Agreement. The foregoing notwithstanding, the Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from the Customer and subject to the provisions of Article 18 herein.

#### **ARTICLE 18 COPYRIGHT**

All Deliverables, including without limitation, all hardware, software, source code, associated documentation and all other materials of every kind and nature, whether hard copy or electronic, (collectively referred to herein as the "Proprietary Material") shall be the sole and exclusive property of the State, free from any claim(s), lien(s), or rights of retention on the part of the Contractor. All patent rights, copyrights and other registration to the Proprietary Material shall be the property of the State of Mississippi, which shall have the sole right to seek patent, copyright, registered design, or other protection in connection therewith, except as to hardware and its associated documentation. If federal or state law should not allow the State of Mississippi to seek patent, copyright, or other registration, the Contractor shall, if so requested by the State, seek such registration and shall irrevocably grant, assign and transfer such registration to the State. In such event, the State shall be responsible for all costs and fees associated with such registration. The Contractor shall not under any circumstances use the Proprietary Material, in whole or in part, without the prior written approval of the Customer and payment of such royalty as the Customer deems appropriate.

#### **ARTICLE 19 CONFIDENTIALITY**

**19.1 CONFIDENTIAL INFORMATION:** "Confidential Information" shall mean (a) those materials, documents, data, and other information which the Contractor has designated in writing as proprietary and confidential, and (b) all data and information which the Contractor acquires as a result of its contact with and efforts on behalf of the Customer and any other information designated in writing as confidential by the State. Each party to this Agreement agrees to protect all Confidential Information provided by one party to the other, to treat all such Confidential Information as confidential to the extent that confidential treatment is allowed under state law, and, except as otherwise required by law, not to publish or disclose such information to any third party without the other party's written permission, and to do so by using those methods and procedures normally used to protect the party's own Confidential Information.

**19.2 DISCLOSURE OF CONFIDENTIAL INFORMATION:** In the event that either party to this Agreement receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information, that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of this Agreement, and shall continue in full force and effect and shall be binding upon the Contractor and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Agreement on behalf of, or under the rights of the Contractor following any termination or completion of this Agreement. The parties agree that this Article is subject to and superseded by Mississippi Code Annotated, Section 25-61-1, et. seq. regarding Public Access to Public Records.

**19.3 EXCEPTIONS TO CONFIDENTIAL INFORMATION:** Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("the Disclosing Party") which (a) is rightfully known to the recipient prior to negotiations leading to this Agreement, other than information obtained in confidence under prior engagements; (b) is generally known or easily ascertainable by non-parties of ordinary skill in computer design and programming or in the business of the Customer; (c) is released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction; (d) is independently developed by the recipient without any reliance on Confidential Information; (e) is or later becomes part of the public domain or may be lawfully obtained by the State or the Contractor from any non-party, or (f) is disclosed with the Disclosing Party's prior written consent.

#### **ARTICLE 20 HOLD HARMLESS**

To the fullest extent allowed by law, the Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the State, its Commissioners, Board Members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, attorneys' fees and claims for damages arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this Agreement. In the State's sole discretion, the Contractor may be allowed to control the defense of any such claim, suit or action. In the event the Contractor defends said claim, suit or action, the Contractor shall use legal counsel acceptable to the State; the Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. The Contractor's obligations under this Article are contingent upon the State promptly notifying the Contractor in writing of any claim, suit or action of which it has knowledge, and the State cooperating with the Contractor's reasonable requests in defending said claim or suit. The Contractor shall not settle any claim, demand, suit or action without the State's concurrence, which the State shall not unreasonably withhold.

#### **ARTICLE 21 TERMINATION**

**21.1 TERMINATION FOR CAUSE:** Either party may terminate this Agreement upon a material breach by the other party upon thirty (30) days' prior written notice unless the defaulting party cures such breach within such thirty (30) day period, or, if the breach is one that is curable but requires more than thirty (30) days to cure, develops a plan to cure such breach within a mutually agreeable period of time and diligently proceeds according to such plan until the breach is cured. The non-defaulting party may also pursue any remedy available to it in law or in equity.

**21.2 DEFAULT BY CONTRACTOR:** The State may terminate the whole or any part of this Agreement for cause under Article 21.1 above under the following circumstances: (a) If the Contractor becomes the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or the Contractor executes an assignment for the benefit of its creditors; or (b) If the Contractor fails to produce Deliverables acceptable to the State within the time specified herein or any extension thereof; or (c) If the Contractor fails to make progress as to endanger performance of this Agreement in accordance with its terms, or (d) If the Contractor fails to perform any other provisions of this Agreement.

**21.3 TERMINATION OTHER THAN FOR CAUSE:** The State may terminate the whole or any part of this Agreement for any reason after giving thirty (30) days' written notice specifying the effective date thereof to the Contractor.

**21.4 RIGHTS UPON TERMINATION FOR CAUSE:** In the event of a termination for cause, the Contractor shall be entitled to: (a) the contract price for any completed Deliverable not previously tendered to the State, provided that the State accepts any such Deliverable under the procedures set forth in Article 13 of this Agreement; (b) the fair value for Work-in-Progress on any Deliverable not completed as of the effective date of the termination, said fair value to be determined by the parties based upon the degree of functional completion of the Deliverable discounted by the amount of labor required to complete the Deliverable; provided that, however, the State may refuse to accept any Work-in-Progress for a specified Deliverable, upon which refusal Contractor shall be due nothing for that Deliverable, (c) less the amount of re-procurement costs expended by the State, including but not limited to, the amount, over and above the amount of the performance bond, that the State incurred to procure the completion of the Deliverable, for Deliverables not accepted in whole or in part. Further, should the State terminate the Contractor for cause, the Contractor shall permanently forfeit the retainage set forth in Article 11 of this Agreement, and the State may seek such other damages and remedies as are available to it under the law. Upon termination for cause, the State shall have the ownership and/or license rights as defined in Articles 17 and 18 for all Deliverables and Work-in-Progress which it accepts under this Article. If, after termination, it is determined by a court of competent jurisdiction that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for other than cause, as set forth in Article 21.5 herein.

**21.5 RIGHTS UPON TERMINATION OTHER THAN FOR CAUSE:** In the event of a termination other than for cause, the Contractor shall be entitled to: (a) the contract price for any completed Deliverable not previously tendered to the State, provided that the State accepts any such Deliverable under the procedures set forth in Article 13 of this Agreement; (b) the fair value for Work-in Progress on any Deliverable not completed, whether accepted or not by the State, as of the effective date of the termination, said fair value to be determined by the parties based upon the degree of functional completion of the Deliverable discounted by the amount of labor required to complete the Deliverable, and (c) the amount of funds actually retained under Article 11 herein. Upon termination of this Agreement other than for cause, the State shall have the ownership and/or license rights as defined in Articles 17 and 18 for all Deliverables and Work-in-Progress which it accepts under this Article.

## **ARTICLE 22 INSURANCE**

**22.1** Contractor and all subcontractors shall maintain, at its own expense, the following insurance coverages in the amounts specified, insuring the Contractor, its employees, agents, designees, subcontractors, and any indemnities as required herein:

- A.** Professional liability insurance in an amount not less than one million dollars (\$1,000,000.00), including personal injury, bodily injury (including both disease or death), property damages and blanket contractual liability; and
- B.** Comprehensive general liability insurance in an amount not less than one million dollars (\$1,000,000.00), including coverage for blanket contractual liability, broad form property damage, personal injury and bodily injury (including illness, disease and death), and products/completed operations; and
- C.** Comprehensive automobile liability insurance, including hired and non-owned vehicles, in an amount not less than one million dollars (\$1,000,000.00), covering bodily injury and property damage; and
- D.** Employee fidelity bond insurance in an amount not less than three hundred thousand dollars (\$300,000.00), and
- E.** Workers' compensation insurance in the amounts required pursuant to the laws of the State of Mississippi.

**22.2 DURATION:** All insurance policies required herein shall be issued by an insurance company or companies licensed to do business in the State of Mississippi and acceptable to the State, and shall be written on an occurrence basis or the Contractor/subcontractor shall provide coverage to the State for a period of not less than three (3) years after expiration of the Warranty Period. The Contractor/subcontractor shall name ITS, the Customer, and the State of Mississippi as additional insured on all insurance policies and coverages, excepting only the professional liability coverage, and all such policies shall include the following endorsement: "It is hereby agreed and understood that ITS, the Customer, and the State of Mississippi are named as additional insured, and that the coverage afforded to ITS, the Customer, and the State of Mississippi under this policy shall be primary insurance. If ITS, the Customer, and the State of Mississippi have other

insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the Insurer's liability under this policy shall not be reduced by the existence of such other insurance".

**22.3 NO CANCELLATION:** No policy of insurance may be canceled, modified or reduced during the course of this Agreement.

**22.4 DEDUCTIBLES:** Contractor/subcontractor shall be responsible for all deductibles and for any inadequacy or absence of coverage, and the Contractor/subcontractor shall have no claim or other recourse against the State for any costs or loss attributable to such deductibles or to coverage limitations, exclusions, or unavailability, all of which shall be borne solely by the Contractor/subcontractor.

**22.5 CERTIFICATE OF INSURANCE:** At the time of the execution of this Agreement, the Contractor/subcontractor shall deliver to the State a Certificate or Certificates of Insurance, certifying the types and the amounts of coverage, certifying that said insurance is in force before the Contractor/subcontractor starts work, certifying that said insurance applies to the Project and to all activities and liability of the Contractor/subcontractor pursuant to this Agreement, and certifying that ITS, the Customer, and the State of Mississippi are named as additional insured on the Contractor/subcontractor's policies of insurance by endorsement as required herein. The Contractor/subcontractor shall simultaneously deliver to ITS, the Customer, and the State of Mississippi one duplicate original of each entire insurance policy.

**22.6 NON-DELEGABLE:** The insurance and indemnity obligations of this Agreement are non-delegable. The Contractor shall not subcontract any part of this Agreement without retaining absolute responsibility for requiring the same insurance coverage from its subcontractors.

**22.7 PAYMENT OF PREMIUMS:** The Contractor/subcontractor shall be responsible for payment of all premiums for insurance required by this Agreement, but the Contractor's/subcontractor's obligations shall not be limited to the purchase of insurance. The Contractor shall indemnify and hold harmless the State, as described in Article 20 of this Agreement, for all damages for which insurance should have been provided pursuant to this Agreement, irrespective of whether said insurance was actually obtained. The Contractor's indemnity obligations under this Agreement shall not be restricted to amounts available under insurance, whether actually obtained or which should have been obtained, but shall extend to the fullest extent, as set forth in Article 20 of this Agreement.

**22.8** The Contractor's and any subcontractor's failure to maintain complete insurance shall be a material breach of this Agreement authorizing the State, at the State's sole election, either to terminate this Agreement for cause or to provide full insurance coverage at the Contractor's sole expense; however, in neither case shall the Contractor's liability be lessened.

**22.9** In the event the Contractor or any subcontractors fail to obtain and maintain insurance required by this Agreement, the State shall be entitled, at its sole discretion and without waiving any rights hereunder, to purchase said insurance and deduct the premium costs from any amounts owed the Contractor. However, the State shall have no obligation to purchase said insurance and failure to do so shall not constitute a waiver of the Contractor's and/or subcontractor's obligations with respect to insurance as set forth in this Agreement.

**22.10** The State shall not be required to purchase any insurance under this Agreement.

## **ARTICLE 23 DISPUTES**

Any dispute concerning a question of fact under this Agreement which is not disposed of by agreement of the Contractor and Customer shall be decided by the Executive Director of ITS or his/her designee. This decision shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute a breach under the terms of this Agreement. Nothing in this Article shall abridge the right of either party to seek such other rights and remedies it may have at law or in equity.

## **ARTICLE 24 RECORD RETENTION AND ACCESS TO RECORDS**

Contractor shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Agreement. The Customer, ITS, any State agency authorized to audit Customer, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to any of the Contractor's books, documents, papers and/or records that are pertinent to this Agreement to make audits, examinations, excerpts and transcriptions at the Contractor's office where such records are kept during Contractor's normal business hours. All records relating to this Agreement shall be retained by the Contractor for three (3) years from the date of receipt of final payment under this Agreement. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

#### **ARTICLE 25 INDEPENDENT CONTRACTOR STATUS**

**25.1** The Contractor shall, at all times, be regarded as an independent contractor and shall at no time act as an agent for the State. Nothing contained herein shall be deemed or construed by the State, the Contractor, or any third party as creating the relationship of principal and agent, partners, joint venturers, or any similar such relationship between the State and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the State or the Contractor hereunder, creates or shall be deemed to create a relationship other than the independent relationship of the State and the Contractor.

**25.2** Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State.

**25.3** It is further understood that the consideration expressed herein constitutes the full and complete compensation for all services and performances hereunder, and that, except as provided for in Articles 8 and 11 of this Agreement, any sum due and payable to Contractor shall be paid as a gross sum with no withholdings or deductions being made by the State for any purpose from said contract sum.

**25.4** Contractor shall pay when due all salaries and wages of its employees, and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation, and any other withholdings that may be required. Neither Contractor nor employees of Contractor are entitled to state retirement or leave benefits.

#### **ARTICLE 26 NON-SOLICITATION OF EMPLOYEES**

Each party to this Agreement agrees not to employ or to solicit for employment, directly or indirectly, any of the other party's employees until at least six (6) months after the expiration/termination of this Agreement, unless mutually agreed to in writing by the State and the Contractor.

#### **ARTICLE 27 COMPLIANCE WITH LAWS**

The Contractor understands that the State is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and the Contractor agrees during the term of the Agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with, and all activities under this Agreement shall be subject to all Customer policies and procedures, and all applicable federal, state and local laws, regulations, policies and procedures as now existing and as may be amended or modified.

#### **ARTICLE 28 ASSIGNMENTS AND SUBCONTRACTS**

**28.1** The Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon the Contractor's special skills and expertise. The Contractor shall not assign, subcontract or otherwise transfer this Agreement or its obligations hereunder in whole or in part without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. Subject to the foregoing, this Agreement shall be binding upon the respective successors and assigns of the parties.



**28.2** Contractor must obtain the written approval of Customer before subcontracting any portion of this Agreement. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this Agreement. All subcontracts shall incorporate the terms of this Agreement and shall be subject to the terms and conditions of this Agreement and to any conditions of approval that the State may deem necessary.

**28.3** Contractor represents and warrants that any subcontract agreement Contractor enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Customer, and that the subcontractor acknowledges that no privity of contract exists between the Customer and the subcontractor and that the Contractor is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Contractor. The Contractor shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Contractor's failure to pay any and all amounts due by Contractor to any subcontractor, materialman, laborer or the like.

**28.4** All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between the Contractor and the Customer, where such dispute affects the subcontract.

## **ARTICLE 29 ADDITIONAL PROVISIONS**

**29.1 AUTHORITY TO CONTRACT:** Contractor warrants (a) that it is a validly organized business with valid authority to enter into this Agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind, and (d) notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

**29.2 WAIVER:** No delay or omission by either party to this Agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver of or modification to any term or condition of this Agreement will void, waive, or change any other term or condition. No waiver by one party to this Agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults. A waiver by the State, to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of the State.

**29.3 GOVERNING LAW:** This Agreement shall be construed in accordance with and governed by the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.

**29.4 NOTICES:** Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by facsimile provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: Mr. David L. Litchliter, Executive Director, Mississippi Department of Information Technology Services, 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201. Customer's address for notice is: Mr. John Simpson, Chief Information Officer, Mississippi Department of Transportation, 401 North West Street, Suite 2041, Jackson, Mississippi 39201. The Contractor's address for notice is: **INSERT VENDOR NOTICE**. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

**29.5 ATTORNEYS' FEES AND EXPENSES:** Subject to other terms and conditions of this Agreement, in the event the Contractor defaults in any obligations under this Agreement, the Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorneys' fees) incurred by the State in enforcing this Agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the Customer or ITS be obligated to pay any attorneys' fees or costs of legal action to the Contractor.

**29.6 FORCE MAJEURE:** Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the Contractor shall notify the State immediately in writing of the cause of its inability to perform; how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate the Agreement.

**29.7 SEVERABILITY:** If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the State's purpose for entering into this Agreement can be fully achieved by the remaining portions of the Agreement that have not been severed. In such event, the parties shall amend the Agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

**29.8 THIRD PARTY ACTION NOTIFICATION:** Contractor shall give the Customer prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this Agreement, and/or which may affect the Contractor's performance under this Agreement.

**29.9 INTEREST:** Except as to late payments as set forth in Article 8.3 herein, the State shall not be required to pay any interest, including prejudgment interest, under this Agreement,

**29.10 CAPTIONS:** The captions and headings in this Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or article of this Agreement.

**29.11 TAXES:** Contractor is solely liable for all taxes, including, but not limited to, use, excise, personal property, and sales tax. It is the Contractor's sole responsibility to contact the appropriate city, county, and state taxing authorities to determine the Contractor's tax liabilities, if any.

**29.12 SOVEREIGN IMMUNITY:** By entering into this Agreement with Contractor the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

**29.13 STATE PROPERTY:** Contractor shall be responsible for the proper custody of any State-owned property furnished for Contractor's use in connection with the performance of this Agreement. Contractor shall reimburse the State for any loss or damage, normal wear and tear excepted.

**29.14 STATE REGISTRATION:** Contractor must furnish certification of authority to conduct business in the State of Mississippi as a condition of this Agreement. Such registration must be obtained from the Secretary of State of the State of Mississippi before actual work under this Agreement begins.

**29.15 LOCATION OF WORK:** All work provided in connection with this contract will be required to be performed on-site in the Customer's offices in Jackson, Mississippi unless written approval is received from the State. Contractor accepts full responsibility for all problems arising out of a decision to perform off-site work.

**29.16 MODIFICATION OR RENEGOTIATION:** This Agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Agreement necessary.

**29.17 INTEGRATED AGREEMENT/MERGER:** This Agreement, including all Contract Documents, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or

agreements, irrespective of whether written or oral, including all terms of any unsigned or “shrink-wrap” license included in any package, media or electronic version of Contractor-furnished software. The Contractor acknowledges that it has thoroughly read all Contract Documents and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein, and is duly authorized to execute this Agreement. Accordingly, this Agreement shall not be construed or interpreted in favor of or against the State or the Contractor on the basis of draftsmanship or preparation hereof.

**29.18 SURVIVAL:** Articles 14, 15, 17, 18, 19, 20, 24, 26, 29.3, 29.12, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

#### **ARTICLE 30 DEBARMENT AND SUSPENSION CERTIFICATION**

Contractor certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

#### **ARTICLE 31 NETWORK SECURITY**

Contractor and Customer understand and agree that the State of Mississippi’s Enterprise Security Policy mandates that all remote access to and/or from the State network must be accomplished via a Virtual Private Network (VPN). If remote access is required at any time during the life of this Agreement, Contractor and Customer agree to implement/maintain a VPN for this connectivity. This required VPN must be IPSec-capable (ESP tunnel mode) and will terminate on a Cisco VPN-capable device ( i.e. VPN concentrator, PIX firewall, etc.) on the State’s premises. Contractor agrees that it must, at its expense, implement/maintain a compatible hardware/software solution to terminate the specified VPN on the Contractor’s premises. The parties further understand and agree that the State protocol standard and architecture are based on industry-standard security protocols and manufacturer engaged at the time of contract execution. The State reserves the right to introduce a new protocol and architecture standard and require the Contractor to comply with same, in the event the industry introduces a more secure, robust protocol to replace IPSec/ESP and/or there is a change in the manufacturer engaged.

#### **ARTICLE 32 STATUTORY AUTHORITY**

By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the executive director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software and services. The parties understand and agree that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of Customer’s or Contractor’s contractual obligations, financial or otherwise, contained within this Agreement.

#### **ARTICLE 33 TRAINING**

Contractor shall, for the fees specified in the attached Exhibit A, provide onsite mentoring services to facilitate knowledge transfer of the process, development, troubleshooting, and management of the forms deployment System. Contractor and Customer shall mutually agree on the time for the training and an outline of the training to be provided. Contractor specifically understands and agrees that Customer will not accept the System until Contractor successfully completes the training requirements. Contractor agrees to provide, upon delivery, all user documentation and technical manuals needed to



fully acquaint the user with operation of the System. It is understood that Customer may make as many copies of the user documentation and technical manuals as deemed needed by Customer.

For the faithful performance of the terms of this Agreement, the parties have cause this Agreement to be executed by their undersigned representatives.

State of Mississippi, Department  
of Information Technology Services,  
on behalf of the Mississippi Department  
of Transportation

**INSERT VENDOR NAME**

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

Printed Name: David L. Litchliter

Printed Name: \_\_\_\_\_

Title: Executive Director

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

# EXHIBIT A

## FORMS AND WORKFLOW